the contract is determinable by the mere 'wish,' 'desire' or caprice of the purchaser, the courts are still unyielding in their disapproval (Kirk Soap Case, 68 Fed. 791, 15 C. C. A. 540).

"No court, however, in so far as I have been able to ascertain, with the exception of the two cases now to be mentioned, has held that a contract for purchase, not for use in an established business, but for sale only, under circumstances similar to the case at bar, is valid. The Supreme Court of Illinois in Minnesota Lumber Co. *v.* Whitebreast Coal Co. (160 Ill. 85, 43 N. E. 774, 31 L. R. A. 529) did hold that a contract for the purchase and sale of the 'requirements' of defendant coal company 'engaged in the purchase, use and sale of coal in its business' was valid. Aside from the fact that the purchaser in that case not only expected to sell coal, but to use it as well, the point considered herein and determined adversely to plaintiff's contention in Crane *v.* Crane (supra), was not made or considered therein. In addition, the conclusion of the court with respect to this branch of the case is based entirely upon the cases of National Furnace Co. *v.* Keystone Manufacturing Co. (110 Ill. 427) and Smith *v.* Morse (20 La. Ann. 220), both of which had to do with circumstances similar to those in the cases cited by plaintiff, and in which the requirements were for an established business other than that of the sale of the precise commodity in question. The same situation existed in Hickey *v.* O'Brien (123 Mich. 611, 82 N. W. 241, 49 L. R. A. 594, 81 Am. St. Rep. 227). The only authority therein cited in support of the conclusion reached was the National Furnace Company case, which was not applicable under the circumstances shown. The conclusion of the Circuit Court of Appeals of the Seventh Circuit in the Crane case, hereinabove referred to, finds support, in my judgment, in A. Santaella Co. *v.* Otto F. Lange & Co. (155 Fed. 719, 84 C. C. A. 145), Cold Blast Transp. Co. *v.* Kansas City Bolt & Nut Co. (114 Fed. 77, 52 C. C. A. 25, 57 L. R. A. 696) and Higbie *v.* Rust (211 Ill. 333, 71 N. E. 1010, 103 Am. St. Rep. 204). "I have not overlooked the point made that a sufficent consideration 'detriment to the promisee'—existed, in that plaintiff obligated itself to buy none of its 'August requirements' from any person other than defendant. Obviously, however, if its obligation had been to buy not what it 'required,' but what it merely desired,' from defendant alone during August, the same sort of consideration—an agreement not to purchase from any one else—would have subsisted. Notwithstanding this, under the principles referred to in all the cases, even those relied upon by plaintiff, the contract would have lacked validity, not from a want of consideration, but, as herein, from a lack of mutuality."

Executors and Administrators—Distribution of Estate—Set-Off of Claims Barred by Limitations.—In Luscher *v.* Security Trust Co.,

199 S. W. 613, in the Court of Appeals of Kentucky, it was held that where an intestate had more than fifteen years previous to her death paid a note as surety for her son and the claim had become barred by the Statute of Limitations other heirs and the administrator could not set off such claim as against the claim of the son to a share in the estate. The decision is interesting as being the latest judicial utterance—and that by a court of last resort—upon a question that has been the subject of much controversy. The opinion is quite voluminous; the following extract will sufficiently explain the court's position as well as exhibit the grounds and authority for the opposite view:

"Of course, where the claim of the estate against the distributee is not barred by limitation and is a valid and subsisting debt against the distributee, there can be no doubt about the right of the estate to rely on the claim as a set-off against the distributee's interest. It should, however, be said that the contention of counsel for the estate that the statute does not bar the right to deduct from the share of a distributee or legatee a debt due by him to the estate is supported by Williams on Executors (vol. 2, p. 619), where it is said:

" 'An executor may retain so much of the legacy as is sufficient to satisfy a debt due from the legatee to the testator, although the remedy for such debt was at the time of the death of the testator barred by the Statute of Limitation.'

"But this text finds its principal support in English cases, although, as said by Woerner on American Law of Administration (2d ed., vol. 2, sec. 564), the same doctrine is held by some American courts, and he refers to the cases of Wilson *v.* Kelly (16 S. C. 216), Holmes *v.* McPheeters, adm'r. (149 Ind. 587, 49 N. E. 452) and Tinkham *v.* Smith (56 Vt. 187). It should, however, be observed that in some of these states the subject is regulated by statute, and in others the courts treated the indebtedness of the heir or legatee as an advancement. But opposed to the English rule referred to by Williams on Executors is Allen *v.* Edwards (136 Mass. 138), where the court held that a debt due from a legatee to the testator, which was at the time of the testator's death barred by the Statute of Limitation, could not be deducted from the legacy, unless the language of the will clearly showed that the testator intended that such deduction should be made.

"In Holt *v.* Libby (80 Me. 329, 14 Atl. 201), the question was clearly presented to the court, and it was held that the executor could not deduct from a legacy a debt due by a legatee to the estate which was barred by limitation, the court saying:

" 'The estate is just as much of a debtor to the indebted legatee as the legatee is to the estate. Each has a legal right and remedy, and the statute-barred debt is not more recoverable by the estate than by any other creditor. To our minds, this is the better doctrine.'

"In the case of Light's Estate (136 Pa. 211, 20 Atl. 536, 537), the same rule was announced, the court saying:

"'If the statute can be pleaded with effect when the decedent's estate is a debtor, we can see no good reason why it may not be pleaded also with like effect when the estate is a creditor; if the running of the statute should be stopped by the death in one case, why not in the other? There is no necessity arising out of the administration of the law, or the practice in equity, which calls for any such distinction; the legatees were as much entitled to the protection of the statute as any other creditor. Admitting the right of an executor, or of the heirs, in the distribution of a decedent's estate, to set off the debts of the legatees against their legacies, the debts, to constitute a valid set-off, should be valid, subsisting debts, not barred by the statute.'

"In Richardson *v.* Keel (9 Lea, 77 Tenn. 74) the court said:

"'We do not perceive the principle upon which it can be held that while suit upon the claim is barred by the statute, so that there can be no judgment or recovery upon it, yet the administrator may appropriate the effects of the defendant, which he holds in trust for him, to the payment of the barred debt.'"

A decision in New York touching the question in Kimball *v.* Scribner, 174 App. Div. 845, decided in November, 1916, wherein it was held that "where an action is brought by a legatee against an executor to recover his legacy, one year having elapsed since the granting of letters testamentary, the executor cannot set up as a defense by way of set-off the amount of unpaid promissory notes which the legatee gave to the testatrix and which the executor holds as assets of the estate, if, in fact, the Statute of Limitations has run against the notes, which latter defense the plaintiff sets up in his reply."

Descent and Distribution—Share of Alien—Diplomatic Officer.—In a proceeding entitled In re White, Public Administrator of Queens County, 100 Misc. 393, 166 N. Y. Supp. 712, it was held that under the treaties existing between the United States and the Kingdom of Austria-Hungary the distributive share of a resident and subject of the Kingdom of Hungary in the estate of a decedent dying in this state should be directed to be paid to the Swedish Consul-General, who had taken charge of Austro-Hungarian interests in the United States pursuant to an agreement with that government and with the consent of the United States Government. The following is the surrogate's opinion:

"This is a motion to amend, nunc pro tunc, as of the 25th day of April, 1917, a decree duly entered, judicially settling the account of the public administrator of the County of Queens, as administrator of estate of said decedent, by providing therein that the distributive share of John Javor, father of said decedent, a non-resident alien,